



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JEAN-DANIEL NOLAND
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

April 27, 2009

Hon. Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

**Re: Proposed Zoning Text Amendment
Inclusionary Housing
ULURP N090316ZRY**

Dear Chair Burden:

At the regular monthly meeting on April 1, 2009, Manhattan Community Board 4 (CB4) **disapproved** the proposed Zoning Text Amendment unless **the conditions** below as discussed in our comments can be met:

With the proposed Text Amendment to the Inclusionary Housing section of the Zoning Resolution the Department of Housing Preservation and Development (HPD) and Department of City Planning (DCP) have addressed some longstanding concerns raised by Manhattan Community Board 4 (CB4) over the past 4 years. However, there are a number of proposed changes that are either counterproductive to the operation of the program or have inadvertent and unintended impacts specific to Community District 4 (CD4). Therefore, CB4, while supportive of the proposal's overall intent, requests certain provisions of the proposed text not apply to certain special zoning districts in the District. Based on our direct experience and issues confronted in our district, that request must be incorporated as a condition of support for this proposed text amendment.

Larger Units for Families

The Board supports changes to Section 23-296(c) which would permit the calculation of the affordable component by square footage, as opposed to requiring that affordable units mirror the market-rate component by number and unit size, thereby permitting the development of affordable units for family size households. Because the rental market in our neighborhood produces predominantly studio and one bedroom units, restrictions embedded in financing programs such as HFA and HPD, which require that the affordable component mirror the market-rate component by unit size, have limited our affordable housing stock to the same unit size distribution. Therefore, we have seen a disproportionate number of studio and one-bedroom units built in our community. The community and the Board have taken the position to request of the development community to create larger family-sized apartments, even if it means fewer affordable units produced.

However, the proposed changes need to go further to be effective, as the 2+ bedroom alternative is presented only as an option, not a requirement. We understand the myriad and conflicting underlying financing restrictions. We believe the change to create more family units should be required and the changes to the financing requirements will follow.

Onsite/Offsite Bonus

CB4 supports the proposed changes to Section 23-951 which resolves the dual standard for the on-site and off-site bonus and promotes integration of the affordable units within the development. This change also resolves a longstanding problem in CB4 where the “off-site” bonus has been used on a contiguous adjacent lot (that has been legally established as a separate tax lot solely for this purpose) to segregate the affordable component from the market rate units.

Equitable Affordable Unit Distribution throughout the Development

CB4 has long been on record in requiring that inclusionary apartments be distributed consistently throughout the building. The current zoning text of Section 23-951 states:

“#Dwelling units# designated as #lower income housing# shall be distributed throughout the #development#.”

It further qualifies that affordable apartments should not be concentrated on certain floors unless 80% of the floors contain more than 2 affordable units. How this text has been interpreted both to allow buildings with units concentrated on the lower floors of a development and not require affordable units on every floor is inexplicable to the Board.

Integration of affordable units creates a healthy mixed community in the building. Therefore, CB4 supports the proposed changes to section 23-96(b)(2) which limits the affordable component to 33% of the total number of dwelling units per floor as a mechanism to require integration of the affordable and market units. It should be noted however that if a developer were to opt to create more two bedroom units (and therefore fewer affordable units) the 33% per floor distribution requirement may not be possible.

However, CB4 cannot support distribution limited to 65% of the floors (Section 23-96(b)(1)), as it segregates the affordable units on the lower floors and does not encourage integration within the building. *Inclusionary housing should be inclusionary.* We reject the argument that this 65% distribution limit is necessary for the financial viability of a project. During the Lower Income Housing Plan review process, CB4 has successfully negotiated the full integration of affordable units on all floors proposed projects. Examples include the Clinton Park development at 770 11th Avenue (Two Trees), 330 West 38th (Glenwood) and 440 West 42nd (Related). These projects have successfully financed and some are under construction.

Therefore the proposed change would represent a lessening of the integration the Board has been able to achieve. To continue to achieve full integration in inclusionary development in CD4, the Board requests text be inserted in the Clinton Special District, the Hudson Yards Special District and the West Chelsea Special District to further modify and ensure in those Special Zoning Districts that affordable units be distributed throughout, on every floor, of any proposed development.

Homeownership

The devil is in the details – many of which have not yet been developed. Many of the details in the actual implementation of this proposal, such as how to replenish reserve funds and limiting resale values, have not yet been developed. While CB4 supports the concept of homeownership for all ranges of income, the Board is concerned that too many details have not been fully thought through and that many practical matters have not been addressed. CB4 is also concerned that the appreciation factor will render these units no longer affordable to the targeted population of 80% AMI. The example given by HPD – which shows the appreciation of a unit purchased at \$150,712 growing to a sale value of \$298,399 after 15 years yet still remaining affordable to a household of 80% AMI -- is based upon an economy which no longer exists. CB4 cannot support the application of the homeownership option in CD4 at this time. The Board requests text be inserted in the Clinton Special District, the Hudson Yards Special District and the West Chelsea Special District to further modify and ensure in those Special Zoning Districts that the homeownership not be applicable.

Cure for Harassment

The proposed Inclusionary Housing changes have inadvertent impacts on the Special Clinton District, the Hudson Yards and West Chelsea districts that reference section 23-90.

The text must be clear that for units required under the Cure for Harassment, Sections 93-90, 96-110 and 98-70 cannot be publicly financed.

Apartment Finishes

The proposed changes require that the apartment finishes—the floors, kitchen counters, appliances, et al.-- in the affordable units be similar, instead of the same as the market-rate units. During the Lower Income Housing Plan review process, CB4 has been has successfully negotiated the same apartment finishes in affordable units as market rate units in proposed projects. Examples include the Clinton Park development at 770 11th Avenue (Two Trees), 330 West 38th (Glenwood), 440 West 42nd (Related), 453 West 37th (Rockrose), 505 West 37th (Rockrose) and 303 10th Avenue (Atlantic Realty). These projects have successfully financed and some are under construction.

Therefore the proposed change would represent a lessening of in apartment standards for affordable units that the Board has been able to achieve. To continue to achieve such apartment finish standards for Inclusionary development in CD4, the Board requests text be inserted in the Clinton Special District, the Hudson Yards Special District and the West Chelsea Special District to further modify and ensure in those Special Zoning Districts that affordable units have the same apartment finishes as market rate units.

Clinton Special District

- The Clinton Special District (CSD) is not listed in Appendix A under Inclusionary Housing Designated Areas, it should be listed.
- Under the current R10 Inclusionary Housing regulations which prohibit use of public subsidies, CB4 is able to secure units at the hard-to-reach 80% AMI income level. With the proposed new changes to permit public financing in R10 District, CB4 is certain units targeted to those earning <50%AMI due to financing incentives such as the 80/20

program. CB4 requests text be inserted in the Clinton Special District to further modify that the public financing option not be applicable in the CSD.

- Under the current R10 Inclusionary in Clinton Special District, commercial square floor area is included when calculating the square footage of the affordable component. Several developments in the CSD include substantial commercial square footage, several are entirely commercial. All have produced Inclusionary Housing. CB4 requests that text be inserted in the Clinton Special District to further modify Section 23-951 and not exempt commercial floor area in the CSD from the Inclusionary floor area calculations.
- In the Special Clinton District, the affordable component must be developed within the boundaries of the Special Clinton District, which is a smaller geographic area than the community district; that modified text must reflect that boundary.

CB4 requests to work with the Department of Housing Preservation and Development and the Department of City Planning to address these requests during the NYC Charter § 200 and § 201 mandated process.

Sincerely,



Jean-Daniel Noland
Chair
Manhattan Community
Board No. 4

[signed 04/27/09]

Sarah Desmond
Co-Chair
Housing, Health & Human
Services Committee



Joe Restuccia
Co-Chair
Housing, Health & Human
Services Committee

c.c.

Assembly Member Richard N. Gottfried
State Senator Thomas Duane
Manhattan Borough President Scott M. Stinger
Council Speaker Christine Quinn
Council Member Gale A. Brewer